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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0474; FRL-9494-2]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia;
Determination of Clean Data for the 2006 Fine Particulate Standard for the Charleston
Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a final determination regarding the Charleston, West Virginia nonattainment area (hereafter referred to as the “Charleston Area” or the “Area”) for the 24-hour 2006 fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). EPA is determining that the Charleston Area has clean data for the 24-hour 2006 PM_{2.5} NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 24-hour 2006 PM_{2.5} NAAQS based on the 2007 - 2009 data and data available to date for 2010 in EPA’s Air Quality System (AQS) database. EPA’s determination releases the Charleston Area from the requirements to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the standard for so long as the Area continues to meet the 24-hour 2006 PM_{2.5} NAAQS.

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of

publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0474**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814-2071, or by e-mail at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

II. What is the Effect of this Action?

III. Statutory and Executive Order Reviews.

I. What Action is EPA Taking?

EPA is making a final determination that the Charleston Area has clean data for the 24-hour

2006 PM_{2.5} NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 PM_{2.5} NAAQS based on the 2007-2009 data and data available to date for 2010 in EPA's AQS database.

On August 19, 2011 (76 FR 51927), EPA proposed its determination of clean data for the Charleston Area. A discussion of the rationale behind this determination and the effect of the determination were included in the notice of proposed rulemaking. EPA received no comments on this notice of proposed rulemaking.

II. What is the Effect of this Action?

Under the provisions of EPA's PM_{2.5} implementation rule (*See* 40 CFR section 51.1004(c)), the requirements for the Charleston Area to submit an attainment demonstration and associated reasonably available control measures (including reasonably available control technology), a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 2006 PM_{2.5} NAAQS are suspended for so long as the area continues to meet the 24-hour 2006 PM_{2.5} NAAQS. If EPA subsequently determines that this area violates the 24-hour 2006 PM_{2.5} NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist and this area would thereafter have to address the pertinent requirements.

This action, does not constitute a redesignation of the Charleston Area to attainment of the 24-

hour 2006 PM_{2.5} NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it find that the Area has met all other requirements for redesignation. Even after a determination of attainment by EPA, the designation status of the Charleston Area is nonattainment for the 24-hour 2006 PM_{2.5} NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Charleston Area.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This clean data determination for the 24-hour 2006 PM_{2.5} NAAQS for the Charleston Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

November 4, 2011
Dated:

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX--West Virginia

2. In § 52.2526, paragraph (f) is added to read as follows:

§ 52.2526 Control strategy: particulate matter.

* * * * *

(f) Determination of Attainment. EPA has determined, as of [insert date of publication in the Federal Register], that based on 2007 to 2009 ambient air quality data, the Charleston nonattainment area has attained the 24-hour 2006 PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 24-hour 2006 PM_{2.5} NAAQS.

[FR Doc. 2011-29767 Filed 11/17/2011 at 8:45 am; Publication Date: 11/18/2011]